IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION:19.12.2007

Tarsem Singh and others

... Petitioners

versus

State (Chandigarh Administration), Chandigarh.

... Respondent

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.Rishi Pal Singh Rana, Advocate,
for the petitioners.
Mr.Rajiv Sharma, standing counsel for UT, Chandigarh.

UMA NATH SINGH, J.

This criminal revision arises out of a judgment dated 17.12.2002 passed by learned Additional Sessions Judge, Chandigarh, in Crl.Appeal Nos. 28 of 9.11.1999, 45 of 4.11.1999 and 46 of 4.11.1999, affirming the conviction recorded by the trial Court under Sections 120-B IPC, 419 IPC, 420 IPC, 467 IPC, 468 IPC and 471 IPC. However, learned appellate Court has reduced the jail sentences awarded by learned trial Court as under:

Name of the accused	Convicted under Sections	Sentence imposed by the trial Court	Sentence imposed by the Additional Sessions Judge
Tarsem Singh	U/s 120-B IPC	To undergo RI for four months	To undergo RI for four months

Name of the accused	Convicted under Sections	Sentence imposed by the trial Court	Sentence imposed by the Additional Sessions Judge
-do-	U/s 420 IPC	To undergo RI for two years and to pay a fine of Rs.500/-, in default of payment of fine, to further undergo RI for six months.	Sentence is reduced to one year RI and fine of Rs.500/- is maintained in appeal, in default of payment of fine, to further undergo RI for three months.
-do-	U/s 468 IPC	To undergo RI for 2-1/2 years and to pay a fine of Rs.500/-, in default, to further undergo RI for six months	Sentence is reduced to one year RI and fine of Rs.500/- under this Section is maintained, in default of payment of fine, to further undergo RI for three months
-do-	U/s471 IPC	To undergo RI for two years and to pay a fine of Rs.500/-, in default, to further undergo RI for six months.	Sentence is reduced to one year RI and fine of Rs.500/- is maintained, in default, to further undergo RI for three months.
Rishi Pal Rana	U/s 120-B IPC	To undergo RI for four months	Sentenced to four months RI
-do-	U/s 420 IPC	To undergo RI for two years and to pay a fine to the tune of Rs.500/-. In default, to further undergo RI for six months	Sentence is reduced to one year RI, fine is maintained as Rs.500/-, in default, to further undergo RI for three months.

Name of the accused	Convicted under Sections	Sentence imposed by the trial Court	Sentence imposed by the Additional Sessions Judge
-do-	U/s 468 IPC	To undergo RI for 2-1/2 years and fine to the tune of Rs.500/-, in default, to further undergo RI for six months.	Sentence is reduced to one year RI and fine is maintained as Rs.500/-, in default, to further undergo RI for three months.
-do-	U/s. 471 IPC	To undergo RI for two years and to pay a fine to the tune of Rs.500/-, in default of payment of fine, to further undergo RI for six months.	Sentence is reduced to one year and fine of Rs.500/- is maintained, in default, to further undergo RI for three months.
Kadam Singh	U/s 120-B IPC	To undergo RI for four months	Sentence is maintained as RI for four months
-do-	U/s. 419 IPC	To undergo RI for two years	Sentence is reduced to one year RI.
-do-	U/s. 467 IPC	To undergo RI for 2-1/2 years and to pay a fine to the tune of Rs.500/-, in default, to further undergo RI for six months.	Sentence is reduced to one year RI and fine is maintained, in default, to further undergo RI for three months.

As per the prosecution case, accused-appellant Rishi Pal Rana was selected for recruitment as a Constable in Chandigarh Police. He was required to obtain a Medical Certificate from General Hospital, Chandigarh. Appellant-ASI Tarsem Singh was deputed from the Police Lines, Chandigarh to accompany Rishi Pal Rana and other recruits to the hospital to get them medically examined on 21-03-1991. It is alleged that appellant ASI Tarsem Singh collected blank medical forms in respect of appellant-Rishi Pal Rana. Accused-appellant Rishi Pal Rana could not pass the

medical test only due to defective eye-sight and he was declared medically unfit on 5.4.1991. It is also alleged that on 8.4.1991, ASI Tarsem Singh contacted constable Balwant Singh of OSI Branch and told that Rishi Pal Rana was not medically examined. ASI Tarsem Singh filled in a blank form for medical examination in his own hand in the name of accused-appellant Rishi Pal Rana and also got a despatch number from OSI Branch. At that time, constable complainant Balwant Singh was not aware of malafide intention of ASI Tarsem Singh. His suspicion was aroused when he received a medical register from the hospital within a very short span of time as, normally, medical register used to come back from hospital only after completion of medical examination of candidates after a week. Constable Balwant Singh checked the record and found that accused-appellant Rishi Pal Rana had already been medically examined and found unfit but on 10.4.1991, he, after giving different address, was medically re-examined and declared medically fit. Hence, constable Balwant Singh submitted a written complaint (Ex. PA) to Vijay Pal Singh, DSP Lines, on 20.4.1991 giving information in that regard. Another complaint dated 16.4.1991 was received from Principal, Medical Officer, General Hospital, Chandigarh addressed to Senior Superintendent of Police, Chandigarh. D.S.P. Headquarters Davinder Singh conducted enquiry and vide the enquiry report dated 14.6.1991 (Ex. PV), he found that appellant-Rishi Pal Rana had got himself medically fit by fraudulent means by sending some other person in the eye-sight test in his place who impersonated as Rishi Pal Singh Rana. He also managed to get his date of birth changed on record. He found that accused-appellant ASI Tarsem Singh helped him in that pursuit. On receipt of the Enquiry Report and legal opinion, a formal FIR was registered as

Ex.P15/A on 13.8.1991. During investigation, the police came out with a theory that one accused-appellant Kadam Singh had impersonated accused-appellant Rishi Pal Rana before Dr. M.M.S. Gill on 11.4.1991. Dr. Gill had medically examined him and found his vision to be correct. During the investigation, the accused was arrested. Statement of witnesses were recorded and relevant documents were seized. On 26.8.1991, ASI Anokh Singh produced accused-appellant Kadam Singh before one Shri H.L. Chawla, Executive Magistrate for getting his specimen signatures which accused Kadam Singh refused to give. ASI Anokh Singh also produced ASI Tarsem Singh before Executive Magistrate who gave his specimen signatures and handwriting. The Investigating Officer got the handwriting compared with the admitted handwriting and signatures of ASI Tarsem Singh. On completion of investigation and other formalities, a challan was put up against the accused. After consideration of challan, the learned Trial Magistrate framed charges under Sections 419, 420, 467, 468, 471 and 120-B IPC. The accused-appellant herein pleaded not guilty and claimed trial. After the conclusion of the trial, the accused were found guilty and sentenced by learned trial Court. However, learned Additional Sessions Judge, while affirming the order of conviction of learned trial Court, has reduced the sentence of the accused petitioners, as discussed herein above.

Assailing the judgments of the Courts below, learned counsel for the petitioners-revisionists submitted that there is no direct evidence and the entire prosecution case is based on circumstantial evidence. Moreover, from the evidence on record, the chain of circumstances is not complete. Learned counsel submitted that after passing the physical and written tests, accused petitioner No.3 Rishi Pal was put to medical examination but was

declared unfit, as his eye sight was not found to satisfy the standard prescribed by the Medical Board. The doctor, who had declared him medically unfit, declared him fit in the re-medical examination. All the three petitioners have nothing to do with the acts of the Doctor as at the time of second medical examination, record of earlier medical examination, which contained the necessary details of the candidate, was already with the Medical Board and any fresh information furnished in the proforma of second medical examination could be verified from the earlier informations available with the doctor. As regards accused petitioner No.1 Tarsem Singh, it has been alleged that he was posted as an ASI in Chandigarh Police at that time and the proforma for second medical examination had been filled up in his handwriting, although he was not in any manner connected with the recruitment process. It is also alleged that he had taken petitioner No.3 along for appearance before the Medical Board in the second round of medical test but the relationship between petitioner Nos.1 and 3 is not established, which is also supported by the defence evidence on record. According to learned counsel, though the prosecution has alleged that petitioner No.1 Tarsem Singh had changed the date of birth of petitioner No.3 from 18.8.1967 to 18.8.1964 but the fact remains that if this allegation is believed, petitioner No.3 instead of being examined by the second Medical Board would have been dis-qualified on the ground of over age. According to learned counsel, at the relevant time, the age prescribed for recruitment as a Constable in Chandigarh Police, under Rule 12.15 of the Punjab Police Rules, was between 18 and 25 years, and with the change of date of birth, petitioner No.3 would have been 27 years in age. As per prosecution evidence, petitioner No.1 Tarsem Singh was not a part of

recruitment process. The prosecution witness, who has been heavily relied upon by the courts below, is Constable Balwant Singh (PW13), who has stated that medical form was taken by ASI Tarsem Singh for re-examination of accused petitioner No.3 Rishi Pal, but this is admitted by the prosecution that this form was freely available in the market and any one could get it from there. This is also a submission of learned counsel that petitioner No.1 Tarsem Singh was produced before an Executive Magistrate for taking his handwriting for comparison, which is not admissible in evidence being hit by Section 73 of the Evidence Act, and further, the handwriting has been compared with his hand writing in an application for leave submitted by him (petitioner No.1 Tarsem Singh). That application has been denied by the prosecution witness, who has stated that no such application was signed in his presence. Besides, the Handwriting Expert appearing on behalf of the defence as DW4 has given a different report saying that the writing in question was not handwritten by petitioner No.1 Tarsem Singh. According to learned counsel, DW4 was more experienced being senior to PW16 in service. This is submitted by learned counsel that DSP Devinder Singh (PW1), who was the incharge of selection process, was inimical towards petitioner No.1 and wanted to frame him up in some case. If there were irregularities in the recruitment process conducted under the supervision of DSP Devinder Singh (PW1), the he himself should not have held an enquiry but on the contrary, he held enquiry and having not found any incriminating material against petitioner Nos.1 and 3, brought in picture petitioner No.2 to weave a story against the accused persons that petitioner No.2 impersonated petitioner No.3 before the Medical Board at the instance of petitioner No.1. Learned Courts below have believed this story little realising that before the

Medical Board, the earlier form containing photograph of the candidate so also his necessary details were available and, therefore, petitioner No.2, who had a different body structure with different height and photograph, could not have been projected as the person impersonating petitioner No.3. Learned counsel emphasised that the DSP (PW1), who was in the helm of affairs, in order to save his own skin, himself conducted a preliminary enquiry and lodged a report against the accused petitioners. This is also a submission of learned counsel that name of petitioner No.2 Kadam Singh was not mentioned in the FIR nor was it a subject matter of preliminary enquiry conducted by the DSP (PW1), but to fill-in the lacuna, he has been introduced to establish that he had impersonated petitioner No.3 at the instance of petitioner No.1 before the Medical Board. Learned counsel has made a legal submission that the DSP (PW1), who was involved in the recruitment process, was not the punishing authority and, therefore, he was not competent to hold an enquiry into the matter. Besides, PW1 was dis-qualified being himself involved in the recruitment process. This is also a submission of learned counsel that petitioner No.3 was not issued any appointment letter and none of the accused persons has received any benefit. This is a further submission of learned counsel that the relationship between the accused persons inter se is also not established. Thus, assailing the judgments of learned Courts below, learned counsel has submitted that the Courts have committed serious error in recording conviction of the accused petitioners even in the absence of evidence to support and under criminal jurisprudence if there is a doubt, the accused would be entitled to get benefit. Even the applications filed under Sections 311 and 391 Cr.P.C. were rejected and the petitioners were not granted

enough opportunity to adduce additional evidence and to properly defend themselves. This is also a submission of learned counsel that some of the material evidences have been placed reliance by the trial Court without the same being precisely put to the accused persons during their Court examinations under Section 313 Cr.P.C. Besides, the sanction for prosecution was not granted by the competent authority, who in this case is the Administrator, Chandigarh.

On the other hand, learned counsel for the UT has placed heavy reliance on the evidence of PW13, Police Constable Balwant Singh, and PW2, Dr.M.M.S.Gill, who medically examined petitioner No.3. Learned counsel also submitted that the accused petitioners have suffered concurrent findings and though the case is based on circumstantial evidence, the entire chain of circumstances is complete.

This Court is conscious of the fact that exercise of revisional power by the High Court under Section 397 Cr.P.C. read with Section 401 Cr.P.C. is to call for the records of any inferior criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and to pass appropriate orders. The Court of Sessions and the Magistrate are inferior criminal Courts to the High Court. Ordinarily, in the matter of exercise of power of revision by the High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records, as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity

of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal Courts or to prevent miscarriage of justice (See: AIR 1997 SC 987 (Krishnan and another versus Krishnaveni and another). While discussing the scope of interference by the High Court in exercise of revisional jurisdiction under Section 435 Cr.P.C. (1898), a Full Bench in a judgment reported in AIR 1966 Goa, Daman and Diu 32 (Caetano Caetano Colaco vs. Joao Rodrigues) has held in para 9 as:

> "It is true that the scope of S.435 of the Code is wider in so far that the High Court can consider the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceeding of an inferior Court, but even so, this jurisdiction is not to be exercised in every case of impropriety or illegality, unless it causes failure of justice. As a broad proposition we may state that interference may be justified where (a) the decision is grossly erroneous; (b) where there is no compliance with the provisions of law; (c) where the finding of fact affecting the decision is not based on the evidence; (d) where material evidence of the parties is not considered, and (e) where judicial discretion is exercised arbitrarily or perversely. These instances are illustrative and not exhaustive. Each case must of necessity

depend on the facts and circumstances of the particular case before the Court."

This Court is not oblivious of the fact that the High Court should not embark upon the re-appreciation of evidence for coming to a different finding. However, a concurrent finding of fact based on illegal appreciation of evidence cannot be called a question of fact, but is a question of law for the purpose of this Section. Therefore, the High Court can interfere under its revisional jurisdiction granted under Section 397 Cr.P.C. The paramount consideration in the mind of the High Court should be that the revisional jurisdiction is to be exercised where the impugned order occasions failure of justice. Even non-consideration of defence evidence would amount to non-appreciation of evidence, causing prejudice to the accused and resulting in gross failure of justice. Similarly, this Court can interfere where the finding of fact arrived at by the Court below is perverse or the Court has ignored the material evidence while arriving at that finding. Such finding cannot be said to be binding on the revisional Court and the revisional Court has the power to reappraise the evidence, take into consideration the evidence, including the evidence, which has been ignored by the Court, and then arrive at a finding. Similarly, the revisional Court can interfere where a finding of fact is based on misreading of evidence or where the conviction is based on absence of material evidence. In exercising the powers under revisional jurisdiction, the ends of justice is the paramount consideration. The bar under this provision will not operate to prevent the abuse of process of law or will not come in the way of securing the ends of justice. In this background, the submissions of learned counsel that this is a case of no evidence; that the conviction is based on

misreading of evidence, which is not in favour of the prosecution, and that the established rules of criminal jurisprudence have not been followed, need to be examined with reference to the materials and evidence on record.

Devinder Singh, DSP (PW1), in his examination-in-chief, has stated as:

> "I obtained the specimen signatures of Rishi Pal Singh, and sent the same for examination by handwriting expert along with the signatures obtained by the eye specialist..." ..... "Ex.PC bears the photograph of Rishi Pal Rana which is duly attested by me and on 8.4.1991 again letter Ex.PD was issued under my signature for medical examination of Rishi Pal Singh..."

In the cross-examination, he has stated as:

> "I cannot recollect at this stage as to which particular employee got Ex.PC and Ex.PD signed from me. The initials are there of some employee but I cannot definitely say as to who had initialled it. I did not join the employee who got Ex.PC and Ex.PD signed from me. Volunteered I joined Balwant Singh during inquiry from CBI Branch. I cannot say if the dispatch No. on Ex.PC and Ex.PD were already there when I signed these documents." .... "The specimen signatures Ex.PW1/A to Ex.PW1/F were taken by me in my office. No one else was present at that time in my office except Rishi Pal." ... "I cannot say who filled in the blanks of proforma of Ex.PC and Ex.PD with regard to the details of Rishi Pal Rana or Rishi Pal Singh." ... "I cannot say and rather I do not know who took Ex.PC and Ex.PD to the Hospital Authority."

Thus, it appears that the specimen signatures of the accused were obtained by this witness during the course of enquiry and the same were sent for examination by the handwriting expert along with the signatures obtained by the Eye Specialist at the time of medical examination of the accused. The accused is not under obligation to give his specimen signature under Article 20(3) of the Constitution of India (See: AIR 1980 SC 791 (State of UP versus Ram Babu Mishra) and in terms of Section 73 of the Evidence Act, the powers to get signatures and compare is given to a Court and not to any other authority. Further, this PW has admitted that Ex.PC, a letter under the signature of this witness for medical examination of accused Rishi Pal, was issued by him. That letter also bears the photograph of the accused duly attested by this witness. Again on 8.4.1991, he himself issued letter (Ex.PD) under his signature for medical examination of this accused. Thus, both the letters for medical examination were issued by this witness. Moreover, he has also said that "he does not know as to which particular employee got Ex.PC and Ex.PD signed by him". He has admitted that he did not join the employee in the enquiry, who got Ex.PC and Ex.PD signed by him. He has also admitted that the specimen signatures (Ex.PW1/A to Ex.PW1/F) were taken by him in his office and no one else was present at that time in his office except accused Rishi Pal. That power is vested in Court under Section 73 of the Evidence Act and the accused is not under obligation to give specimen signature under Article 20(3) of the Constitution. He has also denied saying that he cannot say who filled in the blanks of proforma Ex.PC and Ex.PD, with regard to the details of Rishi Pal Rana or Rishi Pal Singh. Again, he has also denied saying that he cannot say and rather he does not know who took

Ex.PC and Ex.PD to the hospital authority. Thus, this witness has admitted to have issued both the letters (Ex.PC and Ex.PD) under his signatures to accused Rishi Pal for medical test. He had no knowledge as to who got both these letters signed by him nor did he try to find out during his enquiry the employee who had got these letters signed by him. Thus, in the evidence of this witness, there is no incriminating material against accused Tarsem Singh. Now coming to the evidence of Dr.M.M.S. Gill (PW2), in the cross-examination, he has stated that no other person comes with the candidate for the purpose of identification in the eye department. In his further cross-examinations, he has also stated as "I do not keep any record with regard to the persons who have been examined by me and as such there is no question of verification of the facts as to whether that person was earlier medically examined or not." On the contrary, PW1 has categorically mentioned that letters (Ex.PC and Ex.PD) were issued under his signatures as he was authorised to do so and he had attested the photographs of the candidate on both the documents. Further, if the medical test of newly recruited candidates in the Police Force of tiny Union Territory of Chandigarh was over, it is inconceivable that a second requisition for medical examination would escape the notice of higher Police and Medical authorities as mentioned in their evidences, herein above. As regards specimen signatures of the accused Tarsem Singh on Ex.P1 to Ex.P5 (the earlier leave applications), they were seized by one SI Anokh Singh, vide statement of Constable Ravinder Singh No.2003 of Accounts Branch (PW4). In his cross-examination, PW4 has stated that these applications were not written, nor signed by the accused in his presence. Even the Executive Magistrate, H.L.Chawla, (PW8), in his cross-examinations has mentioned

that as an Executive Magistrate, he was not competent to entertain any type of proceedings or inquiry in this case. Despite that the specimen writings of accused Tarsem Singh were taken before him which was contrary to Article 20(3) of the Constitution and Section 73(3) of the Evidence Act. Hon'ble the Apex Court in a judgment reported in AIR 1980 SC 791 (State of Uttar Pradesh versus Ram Babu Misra) has held in para 4 that even Court cannot take specimen writings during investigation as:

> "4. The second paragraph of Sec. 73 enables the Court to direct any person present in Court to give specimen writing 'for the purpose of enabling the Court to compare' such writings with writings alleged to have been written by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of S.73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further S. 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to

seek the assistance of the Civil Court for a direction to some other person to give sample writing under S. 73 of the Evidence Act on the plea that it would help him to decide whether to institute a Civil Suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should it make any difference if the investigating agency seeks the assistance of the Court under S.73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?

Moreover, two different opinions, one on behalf of prosecution and other for defence, about the handwriting of accused Tarsem Singh have been placed on record. A Senior handwriting expert, who has been examined as defence witness (DW4), has denied the handwriting of that accused on the document (Ex.PD) in question. In the judgment of Hon'ble the Apex Court reported in 1977 (2) SCC 210 (Magan Bihari Lal versus The State of Punjab) on the point in question, it has been held that "it is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert." Para 7 of the judgment being relevant on this point is reproduced as:

"7. In the first place, it may be noted that the appellant was at the material time a Guard in the employment of the Railway Administration with his headquarters at Agra and he had nothing to do with the train by which Wagon No. SEKG 40765 was dispatched from Munda to Bikaner, nor with the train

which carried that wagon from Agra to Ludhiana. He was not a Guard on either of these two trains. There was also no evidence to connect the appellant with the theft of the blank Railway Receipt at Banmore Station. It is indeed difficult to see how the appellant, who was a small employee in the Railway Administration, could have possibly come into possession of the blank Railway Receipt from Banmore Station which was not within his jurisdiction at any time. It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex.PW 10/A was that of the same person who wrote the specimen handwritings Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra vs. State of U.P.* That it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Iswari Prasad Mishra vs. Md. Isa* that expert evidence of handwriting

can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee vs. Subodh Kumar Banerjee* where it was pointed out by this Court that experts evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin vs. State of M.P.* and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide *Gurney vs. Langlands and Matter of Alfred Foster's Will*. The Supreme Court of Michigan pointed out in the last mentioned case.

Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship- Opinions are necessarily received, an may be valuable, but at best this kind of evidence is a necessary evil.

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very

> nature, weak and infirm and cannot of itself from the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence."

Regarding allegation that accused ASI Tarsem Singh had taken the newly recruited Constables for medical test, HC Satbir Singh (PW9), in his examination-in-chief, has deposed as:

> "According to these registers, ASI Tarsem Singh accused now present in Court was never deputed to get the new recruit medically examined on the dates 8.4.1991, 10.4.1991 and 11.4.1991, neither there is any departure entry or return entry with regard to this fact of ASI Tarsem Singh for his going to get the new recruits medically examined."

In his cross-examination, in the last line, he has reiterated that it is wrong to suggest that he is deposing falsely.

Ramji Dass (PW10) has stated that he was working as Superintendent Grade-I in the office of the Home Secretary, Chandigarh Administration, in 1991 and 1992. He has stated that the sanction to prosecute ASI Tarsem Singh and Constable Kadam Singh was accorded by the Advisor to the Administrator, exercising the powers of Administrator, and one Shri Baleshwar Rai, IAS, was the Advisor to the Administrator. Thus, the sanction to prosecute accused ASI Tarsem Singh and Constable Kadam Singh was not granted by the Administrator, as was required under the law. Constable Balwant Singh (PW13), who has been placed heavy reliance by the Courts below, has stated in his examination-in-chief that he

had filled the form of docket (Ex.PC), whereon accused Rishi Pal was declared unfit vide report dated 5.4.1991. Thereafter, he has stated that ASI Tarsem Singh filled one blank form in the name of Rishi Pal Singh. After obtaining this form, ASI Tarsem Singh left the office. He has further stated that on page 22 at the place of date of birth, digit one was erased and digit seven was changed to digit four whereas the original date of birth of Rishi Pal Rana was 18.8.1967. In his cross-examination, he has stated as: "I did not make any complaint on 12.4.1991 with regard to the medical by one person twice over. He directed me to reduce the complaint which I made him orally into writing." Again, he has mentioned in the cross-examination that "I did not talk of this matter to any body else during the period 12.4.1991 to 15.4.1991. Thereafter, only on 29.4.1991, my statement was recorded by DSP Devinder Singh Thakur." He has further stated as "ASI Harbhajan Singh and ASI Tarsem Singh were the only two officers who were detailed for taking the recruits to hospital for medical examination. I did not see any written orders in this behalf. I cannot tell who were the recruits taken to the hospital by Harbhajan Singh or by Tarsem Singh." He has also admitted in his cross-examination that the medical proformas which were to be filled for examination were available from the private contractors and it were the candidates, who used to procure the same and then bring the same to the office and he was the only person to fill those proformas. He has further stated that "it is correct that the register in which the proformas filled in are entered by sending the recruits for medical examination is maintained in my hand." He has further stated that as "it is correct that entries in the medical register deputing the candidates/recruits for examination of medical for 5.4.1991 and 8.4.1991 are all in my hand. Again said there is no entry

pertaining to date 8.4.1991 in the medical register. It is further correct that entries in in the above referred register dated 9/10.4.1991 are also in my hand." He has further admitted that on 5.4.1991 and 8.4.1991, in addition to himself, OSI Karam Chand, HC Faquir Chand, HC Ramesh Kumar and one more person, were present. He has also stated that "I did not disclose the names of the persons present in the office at the time ASI Tarsem Singh had taken the recruits for medical examination in my statement to the Investigating Officer." Thereafter, he has stated that "it is correct to suggest that the form Ex.PW2/E and its docket Ex.PD and Ex.PW2/F have been filled in my hands." Whereas, in his examination-in-chief, he has stated that ASI Tarsem Singh had filled in the form. Vijay Pal Singh, DSP (PW14), in his examination-in-chief, has stated that it had come to his notice that one candidate, namely, Rishi Pal, who was selected at Sr.No.113, enrolled for the post of Constable in Chandigarh Administration, was declared medically unfit due to defective visions and he managed re-medical examination with changed particulars and got the medical fitness. However, in his cross-examinations, he has stated that "I did not receive any written report with regard to the matter of Rishi Pal having been declared unfit and then fit. I did not see any documentary evidence in this regard." SI Anokh Singh (PW15), who recorded the FIR in the matter and arrested the accused, in his cross-examinations has stated that "the forms meant for medical examination of a candidate who has been enrolled as a Constable are available from the market. I did not investigate the matter with regard to the procurement of the medical forms (blank) used in this case. Constable Balwant Singh was the person in whose possession the register in which the entry with regard to sending of an enrolled candidate for medical

examination was there." He has also admitted that "there was no order in respect of Tarsem Singh accused for detailing him to take the enrolled candidate for medical examination". In his cross-examination, in answers to the questions under Section 313 Cr.P.C., accused Tarsem Singh has replied as:

"Q. That as per the records produced by HC Satbir Singh, PW, you were never deputed for medical examination of new recruits on 8.4.91, 10.4.91 and 11.4.91?

A. It is correct.

xx xx xx

Q. Why the witnesses are deposing against you?

A. The witnesses are deposing falsely at the instance of DSP Devinder Singh.

Q. Do you want to say anything else?

A. Devinder Singh, DSP, illegally prompted Balwant Singh, C, to make a false report and then started conducting an enquiry against me, which he was not competent to do under the rules."

Thus, in view of settled principles of law and from examination of ocular and contemporaneous documentary evidence as referred to herein above, I am of the view that the Courts below have failed to deliver justice in accordance with recognized rules of criminal jurisprudence. Hence, in order to prevent miscarriage of justice and to secure the ends of justice, I hereby set aside both the impugned judgments of Courts below recording conviction and sentences against the accused petitioners and allow the Crl. Revisions. Resultantly, the accused petitioners are acquitted of the charges

found guilty of, and it is directed that their bail bonds, if any, shall stand discharged.

pk **(UMA NATH SINGH)**
19.12.2007 **JUDGE**